IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Shiv Lal Awasthi Vs. Senior Divisional Personnel Officer, North-Western Railway, Jodhpur

S.B.CIVIL WRIT PETITION NO.482/2005

DATE OF ORDER :: April 02, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.M.K.Trivedi, for the petitioner.
Mr.D.S.Rajvi, for the respondents.

BY THE COURT:

By the instant writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the orders Annexure-P/10 dt. 31.5.2002 and Annexure-P/13 dt. 24.5.2003.

I have heard learned counsel for the parties.

Facts giving rise to the instant writ petition are that the petitioner filed a claim before respondent No.2, the authority appointed under the Payments and Wages Act, 1936 (for short

`the Authority' hereinafter) claiming the wages against respondent No.1.

The matter was posted on 31.5.2002, however, on that day, it was last working day of the Court and for last so many years, the Advocates at Jodhpur have been boycotting the Court on the last working day of every month. Thus, the counsel engaged by the petitioner could not appear before the Court. The claim of the petitioner came to be dismissed vide Annexure-P/10. The restoration application filed by the petitioner seeking restoration of his claim also came to be dismissed vide order Annexure-P/13 dt. 24.5.2003 on the ground of period of limitation.

From the facts noticed above, it appears that the petitioner was not at fault. He engaged the counsel and his claim for wages was to be prosecuted through his counsel and it was the counsel, who failed to appear before the Court on 31.5.2002. There is nothing on record that the counsel informed the petitioner of his intention not to appear or boycott the Court on a particular date. Thus, for the inaction of the counsel, the litigant cannot be allowed to suffer in view of the decision of Hon'ble Supreme Court in Rafiq & Anr. vs. Munshilal & Anr., **AIR 1981 SC 1400.**

Having regard to the facts and circumstances of the case, in my view, ends of justice would be met if the orders Annexure-P/10 and P/13 are set aside and the matter is remanded to the respondents to decide the claim filed by the petitioner under the Payment of Wages Act.

In the result, the writ petition is allowed. Orders Annexure-P/10 dt. 31.5.2002 and Annexure-P/13 dt. 24.5.2003 are set aside. The matter is remanded to the respondent No.2 to decide the claim in accordance with law after affording opportunity to the respective parties. Both the parties shall appear before the Authority on 13.4.2007. There shall be no order as costs.

[H.R.PANWAR],J.

m.asif/-